

VESSEL OPERATIONS REVOLVING FUND

VESSEL OPERATIONS REVOLVING FUND; ESTABLISHMENT; USES; LIMITATIONS (46 App. U.S.C. 1241a (1999)).¹

For working capital for the "Vessel Operations Revolving Fund", which is hereby created for the purpose of carrying out vessel operating functions of the Secretary of Transportation, including charter, operation, maintenance, repair, reconditioning, and betterment of merchant vessels under the jurisdiction of the Secretary of Transportation, \$20,000,000, to remain available until expended.

Notwithstanding any other provision of law, rates for shipping services rendered under said Fund shall be prescribed by the Secretary of Transportation and the Fund shall be credited with all receipts from vessel operating activities conducted thereunder: Provided, That the provisions of sections 1(a), 1(c), 3(c) and 4 of Public Law 17, Seventy-eighth Congress (57 Stat. 45), as amended,² shall be applicable in connection with such operations and to seamen employed through general agents as employees of the United States, who may be employed in accordance with customary commercial practices in the maritime industry, notwithstanding the provisions of any law applicable in terms to the employment of persons by the United States: Provided further, That such sums as may be determined to be necessary by the Secretary of Transportation, with the approval of the Bureau of the Budget, but not exceeding 2 per centum of vessel operating expenses, may be advanced from this Fund to the appropriation "Salaries and expenses" for the purposes of that appropriation in connection with vessel operating functions, but without regard to the limitations on amounts as stated therein: Provided further, That notwithstanding any other provisions of law, the unexpended balances of any working funds or of allocation accounts established, subsequent to January 1, 1951, for the activities provided for under this appropriation, together with receipts heretofore and hereafter received from such activities, may be transferred to and consolidated with this Fund, which shall be available for the purposes of such working funds or allocation accounts.

No money made available to the Department of Transportation, for Maritime Activities, by this or any other Act shall be used in payment for a vessel the title to which is acquired by the Government either by requisition or purchase, or the use of which is taken either by requisition or agreement, or which is insured by the Government and lost while so insured, unless the price or hire to be paid therefor, (except in cases where section 802 of the Merchant Marine Act, 1936, as amended, is

¹ Enacted as section 801 of the Act of June 2, 1951 (65 STAT. 59), as amended.

² 50 U.S.C. App. 1291(a), (c), 1293(c), 1294.

applicable) is computed in accordance with subsection 902(a) of said Act, as that subsection is interpreted by the General Accounting Office.

AVAILABILITY OF VESSEL OPERATIONS REVOLVING FUND; VESSELS INVOLVED IN MORTGAGE FORECLOSURE OR FORFEITURE PROCEEDINGS; REDELIVERY AND LAYUP OF CHARTERED SHIPS; CUSTODY AND HUSBANDING OF GOVERNMENT-OWNED SHIPS (46 App. U.S.C. 1241b (1999)).³

Hereafter the vessel operations revolving fund, created by the Third Supplemental Appropriation Act, 1951, shall be available for necessary expenses incurred, in connection with protection, preservation, maintenance, acquisition, or use of vessels involved in mortgage-foreclosure or forfeiture proceedings instituted by the United States, including payment of prior claims and liens, expenses of sale, or other charges incident thereto; for necessary expenses incident to the redelivery and lay-up, in the United States, of ships now chartered under agreements which do not call for their return to the United States; for activation, repair and deactivation of merchant ships chartered for limited emergency purposes during the fiscal year 1957 under the jurisdiction of the Secretary of Transportation; and for payment of expenses of custody and husbanding of Government-owned ships other than those within reserve fleets.

EXPENSES FOR ACTIVATION, REPAIR AND DEACTIVATION OF MERCHANT SHIPS; RECEIPTS (46 App. U.S.C. 1241c (1999)).⁴

The vessel operations revolving fund created by the Third Supplemental Appropriations Act, 1951, approved June 2, 1951 (Public Law 45, Eighty-second congress; 65 Stat. 52, at 59), shall, beginning July 1, 1956, be available for expenses incurred in connection with the activation, repair, and deactivation of merchant ships chartered under the jurisdiction of the Secretary of Transportation. There shall be credited to such fund all receipts on account of operations after July 1, 1956, under charters of Government-owned ships under the jurisdiction of the Secretary of Transportation.

³ Enacted as part of Maritime Activities set forth in Public Law 84-604, approved June 20, 1956 (70 STAT. 319), the Department of Commerce and Related Agencies Appropriation Act, as amended.

⁴ Enacted as Public Law 84-890, approved August 1, 1956 (70 STAT. 897), as amended.

MARITIME LIABILITY

CHAPTER 301—GENERAL.

46 U.S.C. 30101 (1999). DEFINITIONS.

In this subtitle—

(1) “documented vessel” means a vessel documented under chapter 121 of this title;

(2) “foreign vessel” means a vessel of foreign registry or operated under the authority of a foreign country;

(3) “public vessel” means (except in chapter 315 of this title) a vessel that is owned, demise chartered, or operated by the United States Government or a government of a foreign country;

(4) “recreational vessel” means a vessel—

(A) operated primarily for pleasure; or

(B) leased, rented, or demise chartered to another for the latter’s pleasure;

(5) “seaman” means a master or a crewmember of a vessel in operation;

(6) “State” means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States;

(7) “State vessel” means a vessel owned or demise chartered by the government of a State or an authority or a political subdivision of a State;

(8) “United States”, when used in a geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States; and

(9) “vessel of the United States” means a vessel documented under chapter 121 of this title, numbered under chapter 123 of this title, or titled under the law of a State.

CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS

SUBCHAPTER I—GENERAL.

46 U.S.C. 31301 (1999). DEFINITIONS.

In this chapter—

(1) “acknowledge” means making—

(A) an acknowledgment or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or

(B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, 1961;

(2) “district court” means—

(A) a district court of the United States (as defined in section 451 of title 28);

(B) the District Court of Guam;

(C) the District Court of the Virgin Islands;

(D) the District Court for the Northern Mariana Islands;

(E) the High Court of American Samoa; and

(F) any other court of original jurisdiction of a territory or possession of the United States;

(3) “mortgagee” means—

(A) a person to whom property is mortgaged; or

(B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement;

(4) “necessaries” includes repairs, supplies, towage, and the use of a dry dock or marine railway;

(5) “preferred maritime lien” means a maritime lien on a vessel—

(A) arising before a preferred mortgage was filed under section 31321 of this title;

(B) for damage arising out of maritime tort;

(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(D) for wages of the crew of the vessel;

(E) for general average; or

(F) for salvage, including contract salvage; and

(6) “preferred mortgage”—

(A) means a mortgage that is a preferred mortgage under section 31322 of this title; and

(B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office.

46 U.S.C. 31302 (1999)). AVAILABILITY OF INSTRUMENTS, COPIES, AND INFORMATION.

The Secretary of Transportation shall—

(1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;

(2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and

(3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

46 U.S.C. 31303 (1999). CERTAIN CIVIL ACTIONS NOT AUTHORIZED.

If a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action in rem to enforce the rights of the mortgagee under the mortgage against the additional property.

46 U.S.C. 31304 (1999). LIABILITY FOR NONCOMPLIANCE.

(a) If a person makes a contract secured by, or on the credit of, a vessel covered by a mortgage filed or recorded under this chapter and sustains a monetary loss because the mortgagor or the master or other individual in charge of the vessel does not comply with a requirement imposed on the mortgagor, master, or individual under this chapter, the mortgagor is liable for the loss.

(b) A civil action may be brought to recover for losses referred to in subsection (a) of this section. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court shall award costs and attorney fees to the plaintiff.

46 U.S.C. 31305 (1999). WAIVER OF LIEN RIGHTS. This chapter does not prevent a mortgagee or the lien holder from waiving or subordinating at any time by agreement or otherwise the lien holder's right to a lien, the priority or, if a preferred mortgage lien, the preferred status of the lien.

46 U.S.C. 31306 (1999). DECLARATION OF CITIZENSHIP.

(a) Except as provided by the Secretary of Transportation, when an instrument transferring an interest in a vessel is presented to the Secretary of Transportation for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

(c) Except as provided by the Secretary, an instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

46 U.S.C. 31307 (1999). STATE STATUTES SUPERSEDED.

This chapter supersedes any State statute conferring a lien on a vessel to the extent the statute establishes a claim to be enforced by a civil action in rem against the vessel for necessities.

46 U.S.C. 31308 (1999). SECRETARY OF COMMERCE OR TRANSPORTATION AS MORTGAGEE. When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary may foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 *et seq.*), subject to section 362(b) of title 11.

46 U.S.C. 31309 (1999). GENERAL CIVIL PENALTY. Except as otherwise provided in this chapter, a person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than \$10,000.

46 U.S.C. 31321 (1999). FILING, RECORDING, AND DISCHARGE.

(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary of Transportation to be valid, to the extent the vessel is involved, against any person except—

- (A) the grantor, mortgagor, or assignor;
- (B) the heir or devisee of the grantor, mortgagor, or assignor; and
- (C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

(4) (A) A bill of sale, conveyance, mortgage, assignment, or related instrument may be filed electronically under regulations prescribed by the Secretary.

(B) A filing made electronically under subparagraph (A) shall not be effective after the 10-day period beginning on the date of the filing

unless the original instrument is provided to the Secretary within that 10-day period.

(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

- (1) identify the vessel;
- (2) state the name and address of each party to the instrument;
- (3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees;
- (4) state the interest of the grantor, mortgagor, or assignor in the vessel;
- (5) state the interest sold, conveyed, mortgaged, or assigned; and
- (6) be signed and acknowledged.

(c) If a bill of sale, conveyance, mortgage, assignment, or related document is filed that involves a vessel for which an application for documentation is filed, and the Secretary decides that the vessel cannot be documented by an applicant—

(1) the Secretary shall send notice of the Secretary's decision, including reasons for the decision, to each interested party to the instrument filed for recording; and

(2) 90 days after sending the notice as provided under clause (1) of this subsection, the Secretary—

(A) may terminate the filing; and

(B) may return the instrument filed without recording it under subsection (e) of this section.

(d) A person may withdraw an application for documentation of a vessel for which a mortgage has been filed under this section only if the mortgagee consents.

(e) The Secretary shall—

(1) record the bills of sale, conveyances, mortgages, assignments, and related instruments of a documented vessel complying with subsection (b) of this section in the order they are filed; and

(2) maintain appropriate indexes, for use by the public, of instruments filed or recorded, or both.

(f) On full and final discharge of the indebtedness under a mortgage recorded under subsection (e)(1) of this section, a mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary. The Secretary shall record the certificate.

(g) The mortgage or related instrument of a vessel covered by a preferred mortgage under section 31322(d) of this title, that is later filed under this section at the time an application for documentation is filed, is valid under this section from the time the mortgage or instrument representing financing became a preferred mortgage under section 31322(d).

(h) On full and final discharge of the indebtedness under a mortgage deemed to be a preferred mortgage under section 31322(d) of this title, a mortgagee, on request of the Secretary, a State, or mortgagor, shall provide the Secretary or the State, as appropriate, with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary or the State, as applicable. If filed with the Secretary, the Secretary shall enter that information in the vessel identification system under chapter 125 of this title.

46 U.S.C. 31322 (1999) PREFERRED MORTGAGES.

(a) A preferred mortgage is a mortgage, whenever made, that—

(1) includes the whole of the vessel;

(2) is filed in substantial compliance with section 31321 of this title; and

(3)(A) covers a documented vessel; or

(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter.

* * * * *

Effective October 1, 2001, 46 U.S.C. 31322(a) has been amended to read as follows:

(a) A preferred mortgage is a mortgage, whenever made, that—

(1) includes the whole of the vessel

(2) is filed in substantial compliance with section 31321 of this title;

(3)(A) covers a documented vessel; or

(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter; and

(4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee—

(A) a person eligible to own a vessel with a fishery endorsement under section 12102(c) of this title;

(B) a state or federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(b)); or

(C) a person that complies with the provisions of section 12102(c)(4) of this title.¹

* * * * *

(b) Any indebtedness secured by a preferred mortgage that is filed or recorded under this chapter, or that is subject to a mortgage, security agreement, or instruments granting a security interest that is deemed to be a preferred mortgage under subsection (d) of this section, may have any rate of interest in which the parties agree.²

(c)(1) If a preferred mortgage includes more than one vessel or property that is not a vessel, the mortgage may provide for the separate discharge of each vessel and all property not a vessel by the payment of a part of the mortgage indebtedness.

(2) If a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in a civil action in rem, and the mortgage does not provide for separate discharge as provided under paragraph (1) of this subsection—

(A) the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and

(B) an allocation of mortgage indebtedness for purposes of separate discharge may not be made among the vessel and other property covered by the mortgage.

(d)(1) A mortgage, security agreement, or instrument granting a security interest perfected under State law covering the whole of a vessel titled in a State is deemed to be a preferred mortgage if—

(A) the Secretary certifies that the State titling system complies with the Secretary's guidelines for a titling system under section 13106(b)(8) of this title; and

¹ Subsection (a) was amended by section 202(b) of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681, 2681-618), the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. Section 203 of Public Law 105-277 provides: "The amendments made by section 202 shall take effect on October 1, 2001." Section 213(g) of Public Law 105-277, provides: "**(g) International Agreements.** In the event that any provision of section 12102(c) or section 31322(a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party with respect to the owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to such vessel to the extent of any such inconsistency. The provisions of section 12102(c) and section 31322(a) of title 46, United States Code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to the owner on October 1, 2001 of such vessel if any ownership interest in that owner is transferred to or otherwise acquired by a foreign individual or entity after such date."

² Subsection (b) was amended by section 401(c)(1) of Public Law 105-383, approved November 13, 1998 (112 STAT. 3411, 3425), the Coast Guard Authorization Act of 1998.

(B) information on the vessel covered by the mortgage, security agreement, or instrument is made available to the Secretary under chapter 125 of this title.

(2) This subsection applies to mortgages, security agreements, or instruments covering vessels titled in a State after—

(A) the Secretary's certification under paragraph (1)(A) of this subsection; and

(B) the State begins making information available to the Secretary under chapter 125 of this title.

(3) A preferred mortgage under this subsection continues to be a preferred mortgage even if the vessel is no longer titled in the State where the mortgage, security agreement, or instrument granting a security interest became a preferred mortgage under this subsection.

(e) If a vessel is already covered by a preferred mortgage when an application for titling or documentation is filed—

(1) the status of the preferred mortgage covering the vessel to be titled in the State is determined by the law of the jurisdiction where the vessel is currently titled or documented; and

(2) the status of the preferred mortgage covering the vessel to be documented under chapter 121 is determined by subsection (a) of this section.

SUBCHAPTER II. COMMERCIAL INSTRUMENTS.

46 U.S.C. 31323 (1999). DISCLOSING AND INCURRING OBLIGATIONS BEFORE EXECUTING PREFERRED MORTGAGES.

(a) On request of the mortgagee and before executing a preferred mortgage, the mortgagor shall disclose in writing to the mortgagee the existence of any obligation known to the mortgagor on the vessel to be mortgaged.

(b) After executing a preferred mortgage and before the mortgagee has had a reasonable time to file the mortgage, the mortgagor may not incur, without the consent of the mortgagee, any contractual obligation establishing a lien on the vessel except a lien for—

(1) wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(2) wages for the crew of the vessel;

(3) general average; or

(4) salvage, including contract salvage.

(c) On conviction of a mortgagor under section 31330(a)(1)(A) or (B) of this title for violating this section, the mortgage indebtedness, at the option of the mortgagee, is payable immediately.

46 U.S.C. 31324 (1999). RETENTION AND EXAMINATION OF MORTGAGES OF VESSELS COVERED BY PREFERRED MORTGAGES.

(a) On request, the owner, master, or individual in charge of a vessel covered by a preferred mortgage shall permit a person to examine the mortgage if the person has business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of a mortgage of the vessel.

(b) A mortgagor of a preferred mortgage covering a self-propelled vessel shall use diligence in keeping a certified copy of the mortgage on the vessel.

46 U.S.C. 31325 (1999). PREFERRED MORTGAGE LIENS AND ENFORCEMENT.³

(a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel.

(b) On default of any term of the preferred mortgage, the mortgagee may—

(1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel;

(2) enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in—

(A) a civil action in personam in admiralty against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(B) a civil action against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(3) enforce the preferred mortgage lien or a claim for the outstanding indebtedness secured by the mortgaged vessel, or both, by exercising any other remedy (including an extrajudicial remedy) against a documented vessel, a vessel for which an application for documentation is filed under chapter 121 of this title, a vessel titled in a State, a foreign vessel, or a mortgagor, maker, comaker, or guarantor for the amount of

³ Section 1124(a) and (b) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3980), amended 46 U.S.C. 31325, by the addition of subsection (b)(3) and (f). Section 1124(c) provides: “(c) Rule of Construction. The amendment made by subsections (a) and (b) may not be construed to imply that remedies other than judicial remedies were not available before the date of enactment of this section to enforce claims for outstanding indebtedness secured by mortgaged vessels.”

the outstanding indebtedness or any deficiency in full payment of that indebtedness if—

(A) the remedy is allowed under applicable law; and

(B) the exercise of the remedy will not result in a violation of section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

(c) The district courts have original jurisdiction of a civil action brought under subsection (b)(1) or (2) of this section. However, for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel, this jurisdiction is exclusive of the courts of the States for a civil action brought under subsection (b)(1) of this section.

(d)(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—

(A) the master or individual in charge of the vessel;

(B) any person that recorded under section 31343(a) or (d) of this title a notice of a claim of an undischarged lien on the vessel; and

(C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.

(3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.

(e) In a civil action brought under subsection (b)(1) of this section—

(1) the court may appoint a receiver and authorize the receiver to operate the mortgaged vessel and shall retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and

(2) when directed by the court, a United States marshal may take possession of a mortgaged vessel even if the vessel is in the possession or under the control of a person claiming a possessory common law lien.

(f)(1) Before title to the documented vessel or vessel for which an application for documentation is filed under chapter 121 is transferred

by an extrajudicial remedy, the person exercising the remedy shall give notice of the proposed transfer to the Secretary, to the mortgagee of any mortgage on the vessel filed in substantial compliance with section 31321 of this title before notice of the proposed transfer is given to the Secretary, and to any person that recorded a notice of a claim of an undischarged lien on the vessel under section 31343(a) or (d) of this title before notice of the proposed transfer is given to the Secretary.

(2) Failure to give notice as required by this subsection shall not affect the transfer of title to a vessel. However, the rights of any holder of a maritime lien or a preferred mortgage on the vessel shall not be affected by a transfer of title by an extrajudicial remedy exercised under this section, regardless of whether notice is required by this subsection or given.

(3) The Secretary shall prescribe regulations establishing the time and manner for providing notice under this subsection.

46 U.S.C. 31326 (1999). COURT SALES TO ENFORCE PREFERRED MORTGAGE LIENS AND MARITIME LIENS AND PRIORITY OF CLAIMS.

(a) When a vessel is sold by order of a district court in a civil action in rem brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated, including a possessory common law lien of which a person is deprived under section 31325(e)(2) of this title, and the vessel is sold free of all those claims.

(b) Each of the claims terminated under subsection (a) of this section attaches, in the same amount and in accordance with their priorities to the proceeds of the sale, except that—

(1) the preferred mortgage lien, including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.), has priority over all claims against the vessel (except for expenses and fees allowed by the court, costs imposed by the court, and preferred maritime liens); and

(2) for a foreign vessel whose mortgage has not been guaranteed under title XI of that Act, the preferred mortgage lien is subordinate to a maritime lien for necessities provided in the United States.

46 U.S.C. 31327 (1999). FORFEITURE OF MORTGAGEE

INTEREST. The interest of a mortgagee in a documented vessel or a vessel covered by a preferred mortgage under section 31322(d) of this title may be terminated by a forfeiture of the vessel for a violation of a law of the United States only if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation.

46 U.S.C. 31329 (1999). COURT SALES OF DOCUMENTED VESSELS.

(a) A documented vessel may be sold by order of a district court only to—

(1) a person eligible to own a documented vessel under section 12102 of this title; or

(2) a mortgagee of that vessel.

(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

(1) the vessel must be held by the mortgagee for resale;

(2) the vessel held by the mortgagee is subject to section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

(3) the sale of the vessel to the mortgagee is not a sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary.

(e) A sale of a vessel contrary to this section is void.

(f) This section does not apply to a documented vessel that has been operated only for pleasure.

46 U.S.C. 31330 (1999). PENALTIES.

(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

(A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title;

(C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary of Transportation; or

(D) with intent to defraud, does not comply with section 31321(h) of this title.

(2) A mortgagor is liable to the United States Government for a civil penalty of not more than \$10,000 if the mortgagor—

(A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) incurs a contractual obligation in violation of section 31323(b) of this title;

(C) files with the Secretary a mortgage made not in good faith; or

(D) does not comply with section 31321(h) of this title.

(b)(1) A person that knowingly violates section 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

(2) A person violating section 31329 of this title is liable to the Government for a civil penalty of not more than \$25,000.

(3) A vessel involved in a violation under section 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

SUBCHAPTER III. MARITIME LIENS.

46 U.S.C. 31341 (1999). PERSONS PRESUMED TO HAVE AUTHORITY TO PROCURE NECESSARIES.

(a) The following persons are presumed to have authority to procure necessities for a vessel:

(1) the owner;

(2) the master;

(3) a person entrusted with the management of the vessel at the port of supply; or

(4) an officer or agent appointed by—

(A) the owner;

(B) a charterer;

(C) an owner pro hac vice; or

(D) an agreed buyer in possession of the vessel.

(b) A person tortiously or unlawfully in possession or charge of a vessel has no authority to procure necessities for the vessel.

46 U.S.C. 31342 (1999). ESTABLISHING MARITIME LIENS.

(a) Except as provided in subsection (b) of this section, a person providing necessities to a vessel on the order of the owner or a person authorized by the owner—

(1) has a maritime lien on the vessel;

(2) may bring a civil action in rem to enforce the lien; and

(3) is not required to allege or prove in the action that credit was given to the vessel.

(b) This section does not apply to a public vessel.

46 U.S.C. 31343 (1999). RECORDING AND DISCHARGING LIENS ON PREFERRED MORTGAGE VESSELS.

(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel covered by a preferred mortgage filed or recorded under this chapter may record with the Secretary of Transportation a notice of that person's lien claim on the vessel. To be recordable, the notice must—

- (1) state the nature of the lien;
- (2) state the date the lien was established;
- (3) state the amount of the lien;
- (4) state the name and address of the person; and
- (5) be signed and acknowledged.

(b) The Secretary shall record a notice complying with subsection (a) of this section.

(c) On full and final discharge of the indebtedness that is the basis for a claim recorded under subsection (b) of this section, on request of the Secretary or owner, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.

(d) A person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) of this title must record and discharge the lien as provided by the law of the State in which the vessel is titled.

UNITED STATES COMMERCIAL SHIPYARD REACTIVATION

H.R. 3424, as enacted by Section 1000, Division B of Public Law 106-113, approved November 29, 1999 (113 STAT. 1501), the Consolidated Appropriations Act, FY 2000, sets forth the Department of Labor Appropriations Act, FY 2000. Title I, Employment and Training Administration, appropriates \$5,465,618,000 for Training and Employment Service (113 STAT. 1501A-217). The Conference Report (H. Rpt. 106-479), provides at page 583, 584:

The conference agreement appropriates \$5,465,618,000 Of the amount appropriated, \$2,463,000,000 becomes available on October 1, 2000 The agreement includes language authorizing the use of funds under the dislocated workers program for projects that provide assistance to new entrants in the workforce and incumbent workers as proposed by the Senate. . . .

The Department is expected to make every effort to be flexible in the use of worker training funds for reactivated shipyards, such as those referenced in the Senate Report. The conference agreement encourages the Department to use national emergency grants under the dislocated workers program to supplement available resources for (1) worker training needs at reactivated shipyards that have experienced large-scale worker dislocation, (2) continuing training to utilize the workplace as site for learning, (3) supporting training for American workers at state-of-the-art foreign shipyards, and (4) continuing upgrading of workers skills to increase employability and job retention.

The Senate Report (S. Rpt. 106 -166), provides at page 19:

The Committee notes that funding is requested for the International Shipyard Worker Training Demonstration Project at the Quincy, Massachusetts shipyard. Quincy Shipyard could create hundreds of new, highly skilled jobs. Once trained, shipyard workers could assist in training hundreds of other workers in advanced shipyard techniques and systems.

The reopening of America's commercial shipyards is an opportunity to create high skilled jobs, strengthen our national security, and bring into the United States technology currently available only in competing economies. Traditional worker training programs may not fit the needs of these workers. The Department of Labor is expected to make every effort to be flexible in the use of worker training funding for reactivated shipyards, such as those in Philadelphia, Pennsylvania, Ketchikan, Alaska, and Quincy, Massachusetts. The Committee encourages the Department to use National Emergency Grants to supplement available resources for (1) worker training needs at reactivated shipyards that have experienced large scale worker dislocation, (2) continuing training to utilize the workplace as a site for learning, (3) supporting training for

American workers at state-of-the-art foreign shipyards, and (4) continuing upgrading of workers skills to increase employability and job retention.

MILITARY PROGRAMS

Fast Sealift Program

SEC. 1424.¹ FAST SEALIFT PROGRAM.

(a) **Establishment of Program.** The Secretary of the Navy shall establish a program for the construction and operation, or conversion and operation, of cargo vessels that incorporate features essential for military use of the vessels.

(b) **Program Requirements.** The program under this section shall be carried out as follows:

(1) The Secretary of the Navy shall establish the design requirements for vessels to be constructed or converted under the program.

(2) In establishing the design requirements for vessels to be constructed or converted under the program, the Secretary shall use commercial design standards and shall consult with the Administrator of the Maritime Administration.

(3) Construction or conversion of the vessels shall be accomplished in private United States shipyards.

(4) The vessels constructed or converted under the program shall incorporate propulsion systems whose main components (that is, the engines, reduction gears, and propellers) are manufactured in the United States.

(5) The vessels constructed or converted under the program shall incorporate bridge and machinery control systems and interior communications equipment which—

(A) are manufactured in the United States; and

(B) have more than half of their value, in terms of cost, added in the United States.

(6) The Secretary of Defense may waive the requirement of paragraph (5) with respect to a system or equipment described in that paragraph if—

(A) the system or equipment is not available; or

(B) the costs of compliance would be unreasonable compared to the costs of purchase from a foreign manufacturer.

(c) **Charter of Vessels Constructed.**

(1) Except when the Secretary determines that having a vessel immediately available with a full or partial crew is in the national interest, the

¹ Section 1424 of Public Law 101-510, approved November 5, 1990 (104 STAT. 1485, 1683), the National Defense Authorization Act for Fiscal Year 1991, as amended (10 U.S.C. 7291, note).

Secretary, in consultation with the Administrator of the Maritime Administration, shall charter each vessel constructed before October 1, 1995, under the program for commercial operation. Any such charter—

(A) shall not permit the operation of the vessel other than in the foreign commerce of the United States;

(B) may be made only with an individual or entity that is a citizen of the United States (which, in the case of a corporation, partnership, or association, shall be determined in the manner specified in section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)); and

(C) shall require that the vessel be documented (and remain documented) under the laws of the United States.

(2) The Secretary may enter into a charter under paragraph (1) only through the use of competitive bidding procedures that ensure that the highest charter rates are obtained by the United States consistent with good business practice, except that the Secretary may operate the vessel (or contract to have the vessel operated) in direct support of United States military forces during a time of war or national emergency and at other times when the Administrator of the Maritime Administration determines that operation would not unfairly compete with another United States-flag vessel.

(3) If the Secretary determines that a vessel previously chartered under the program no longer has commercial utility, the Secretary may transfer the vessel to the National Defense Reserve Fleet.

(4) A contract for the charter of a vessel under paragraph (1) shall include a provision that the charter may be terminated for national security reasons without cost to the United States.

(d) Reports to Congress.

(1) Not later than six months after the date of the enactment of this Act, the Secretary of the Navy shall submit to Congress a report describing the Secretary's plan for implementing the fast sealift program authorized by this section.

(2) Not later than three years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the implementation of the plan described in the report submitted under paragraph (1). The report shall include a description of vessels built or under contract to be built pursuant to this section, the use of such vessels, and the operating experience and manning of such vessels.

(3) The reports under paragraphs (1) and (2) shall be prepared in consultation with the Administrator of the Maritime Administration.

(e) Availability of Funds. Amounts appropriated to the Department of Defense for any fiscal year for acquisition of fast sealift vessels may be used for the program under this section.

SEC. 1021.² PROCUREMENT OF SHIPS FOR THE FAST SEALIFT PROGRAM.

(a) Acquisition and Conversion of U.S. Built Vessels.

Notwithstanding any other provision of law, the Secretary of the Navy may use funds available for the Fast Sealift Program—

(1) to acquire vessels for the program from among available vessels built in United States shipyards; and

(2) to convert in United States shipyards vessels built in United States shipyards.

(b) Acquisition of Five Foreign-Built Vessels. Notwithstanding any other provision of law, funds available for the Fast Sealift Program may be used for the acquisition of five vessels built in foreign shipyards and for conversion of those vessels in United States shipyards if the Secretary of the Navy determines that acquisition of those vessels is necessary to expedite the availability of vessels for sealift.

SEC. 375.³ CONSIDERATION OF VESSEL LOCATION FOR THE AWARD OF LAYBERTH CONTRACTS FOR SEALIFT VESSELS.

(a) Consideration of Vessel Location in the Award of LAYBERTH Contracts. As a factor in the evaluation of bids and proposals for the award of contracts to LAYBERTH sealift vessels of the Department of the Navy, the Secretary of the Navy shall include the location of the vessels, including whether the vessels should be layberthed at locations where—

(1) members of the Armed Forces are likely to be loaded onto the vessels; and

(2) layberthing the vessels maximizes the ability of the vessels to meet mobility and training needs of the Department of Defense.

(b) Establishment of Location as a Major Criterion. In the evaluation of bids and proposals referred to in subsection (a), the Secretary of the Navy shall give the same level of consideration to the location of the vessels as the Secretary gives to other major factors established by the Secretary.

(c) Applicability. Subsection (a) shall apply to any solicitation for bids or proposals issued after the end of the 120-day period beginning on the date of the enactment of this Act.

² Section 1021 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2485) (10 U.S.C. 7291, note).

³ Section 375 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2385, 2315) the National Defense Authorization Act for Fiscal Year 1993, (10 U.S.C. 7291, note).

National Defense Sealift Fund¹

10 U.S.C. 2218 (1999). NATIONAL DEFENSE SEALIFT FUND.

(a) **Establishment.** There is established in the Treasury of the United States a fund to be known as the “National Defense Sealift Fund”.

(b) **Administration of Fund.** The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) **Fund Purposes.**

(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Research and development relating to national defense sealift.

(E) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).

(d) **Deposits.** There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for fiscal years after fiscal year 1993 for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

¹ Note that Public Law 106-65, approved October 5, 1999, (113 STAT. 512), the DOD Authorization Act FY 2000, amended the provisions of the National Defense Sealift Fund in two significant respects. Section 1014(b) (113 STAT. 742), expanded the definition of “Department of Defense sealift vessel,” now set forth in 10 U.S.C. 2218(l), to include a strategic sealift ship, a combat logistics force ship, a maritime prepositioned ship, and “any other auxiliary support vessel.” Section 1015 (113 STAT. 743), added a new subsection (k) generally providing for DOD national defense features on a vessel.

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 508 and 510 of the Merchant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be deposited in the Fund.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).²

(e) Acceptance of Support.

(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) Limitations.

(1) Not more than a total of five vessels built in foreign ship yards may be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1).

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of Public Law 101-510 (104 Stat. 1683).³

(g) Expiration of Funds after 5 Years. No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

² Section 1424 is set forth under Fast Sealift Program, page 199, *supra*.

³ *Id.*

(h) **Budget Requests.** Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) **Title or Management of Vessels.** Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(j) **Authority for Certain Use of Funds.** Upon a determination by the Secretary of Defense that such action serves the national defense interest and after consultation with the congressional defense committees, the Secretary may use funds available for obligation or expenditure for a purpose specified under subsection (c)(1) (A), (B), (C), and (D) for any purpose under subsection (c)(1).

(k) **Contracts for Incorporation of Defense Features in Commercial Vessels.**

(1) The head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer.

(2) The head of an agency may make advance payments to the contractor under a contract under paragraph (1) in a lump sum, in annual payments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a preferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall-

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(1) **Definitions.** In this section:

(1) The term "Fund" means the National Defense Sealift Fund established by subsection (a).

(2) The term "Department of Defense sealift vessel" means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following—

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101-510 (104 Stat. 1683)⁴

(B) A maritime propositioning ship

(C) An afloat propositioning ship

(D) An aviation maintenance support ship.

(E) A hospital ship.

⁴ See footnote 2, *supra*.

- (F) A strategic sealift ship.
- (G) A combat logistics force ship.
- (H) A maritime prepositioned ship.
- (I) Any other auxiliary support vessel.

(3) The term “national defense sealift vessel” means—

- (A) A Department of Defense sealift vessel; and
- (B) A national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(4) The term “congressional defense committees” means—

- (A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and
- (B) the Committee on National Security and the Committee on Appropriations of the House of Representatives.

(5). The term “head of an agency” has the meaning given that term in section 2302(1) of this title.⁵

* * * * *

NATIONAL DEFENSE SEALIFT FUND FUNDING FY 1999

A. APPROPRIATIONS. Title V of Public Law 106–79, approved October 25, 1999 (113 STAT. 1212, 1228), the DOD Appropriations Act for FY 2000, provides:

National Defense Sealift Fund

For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744); \$717,200,000, to remain available until expended: *Provided*, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (that is: engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes: *Provided further*, That the exercise of an option in a contract awarded through the obligation of previously appropriated funds shall not be considered to be the award of a new contract: *Provided fur-*

⁵ 10 U.S.C. 2302(1) provides: “(1) The term ‘head of an agency’ means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration.”

ther, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes.

B. AUTHORIZATIONS. Section 302 of Public Law 106-65, approved October 5, 1999 (113 STAT. 512, 557), the DOD Authorization Act, FY 2000, provides:

Sec. 302. Working Capital Funds.

Funds are hereby authorized to be appropriated for fiscal year 2000 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

* * * * *

(2) For the National Defense Sealift Fund, \$434,700,000.

United States Commerical Shipyards

A. NATIONAL SHIPBUILDING INITIATIVE. Section 1351 to 1354 of Public Law 103-160, approved November 30, 1993 (107 STAT. 1809), the National Defense Authorization Act for Fiscal Year 1994, as amended (10 U.S.C. 2501, note), provide:

SEC. 1351. SHORT TITLE. This subtitle may be cited as the "National Shipbuilding and Shipyard Conversion Act of 1993".

SEC. 1352. NATIONAL SHIPBUILDING INITIATIVE.

(a) **Establishment of Program.** There shall be a National Shipbuilding Initiative program, to be carried out to support the industrial base for national security objectives by assisting in the reestablishment of the United States shipbuilding industry as a self-sufficient, internationally competitive industry.

(b) **Administering Departments.** The program shall be carried out—

- (1) by the Secretary of Defense, with respect to programs under the jurisdiction of the Secretary of Defense; and

- (2) by the Secretary of Transportation, with respect to programs under the jurisdiction of the Secretary of Transportation.

(c) **Program Elements.** The National Shipbuilding Initiative shall consist of the following program elements:

- (1) *Financial Incentives Program.* A financial incentives program to provide loan guarantees to initiate commercial ship construction for domestic and export sales, encourage shipyard modernization, and support increased productivity.

- (2) *Technology Development Program.* A technology development program, to be carried out within the Department of Defense by the Defense Advanced Research Projects Agency, to improve the technology base for advanced shipbuilding technologies and related dual-use technologies through activities including a development program for innovative commercial ship design and production processes and technologies.

- (3) *Navy's Affordability through Commonality Program.* Enhanced support by the Secretary of Defense for the shipbuilding program of the Department of the Navy known as the Affordability Through Commonality (ATC) program, to include enhanced support (A) for the development of common modules for military and commercial ships, and (B) to foster civil-military integration into the next generation of Naval surface combatants.

- (4) *Navy's Manufacturing Technology and Technology Base Programs.* Enhanced support by the Secretary of Defense for, and strengthened funding for, that portion of the Manufacturing Technology

program of the Navy, and that portion of the Technology Base program of the Navy, that are in the areas of shipbuilding technologies and ship repair technologies.

SEC. 1353. DEPARTMENT OF DEFENSE PROGRAM MANAGEMENT THROUGH DEFENSE ADVANCED RESEARCH PROJECTS AGENCY. The Secretary of Defense shall designate the Defense Advanced Research Projects Agency of the Department of Defense as the lead agency of the Department of Defense for activities of the Department of Defense which are part of the National Shipbuilding Initiative program. Those activities shall be carried out as part of defense conversion activities of the Department of Defense.

SEC. 1354. DEFENSE ADVANCE RESEARCH PROJECTS AGENCY FUNCTIONS AND MINIMUM FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.

(a) **DARPA Functions.** The Secretary of Defense, acting through the Director of the Defense Advanced Research Projects Agency, shall carry out the following functions with respect to the National Shipbuilding Initiative program:

(1) Consultation with the Maritime Administration, the Office of Economic Adjustment, the National Economic Council, the National Shipbuilding Research Project, the Coast Guard, the National Oceanic and Atmospheric Administration, appropriate naval commands and activities, and other appropriate Federal agencies on—

(A) development and transfer to the private sector of dual-use shipbuilding technologies, ship repair technologies, and shipbuilding management technologies;

(B) assessments of potential markets for maritime products; and

(C) recommendation of industrial entities, partnerships, joint ventures, or consortia for short-and long-term manufacturing technology investment strategies.

(2) Funding and program management activities to develop innovative design and production processes and the technologies required to implement those processes.

(3) Facilitation of industry and Government technology development and technology transfer activities (including education and training, market assessments, simulations, hardware models and prototypes, and national and regional industrial base studies).

(4) Integration of promising technology advances made in the Technology Reinvestment Program of the Advanced Research Projects Agency into the National Shipbuilding Initiative to effect full defense conversion potential.

(b) Financial Commitment of Non-Federal Government Participants.

(1) *Maximum Department of Defense Share.* The Secretary of Defense shall ensure that the amount of funds provided by the Secretary to a non-Federal government participant does not exceed 50 percent of the total cost of technology development and technology transfer activities.

(2) *Regulations.* The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a partnership for the purpose of calculating the share of the partnership costs that has been or is being undertaken by such participants. In prescribing the regulations, the Secretary may determine that a participant that is a small business concern may use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of partnership activities. Any such funds so used may be included in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity contribution in the program from non-Federal sources.

B. SHIPYARD REVITALIZATION. Section 1031 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2489), the National Defense Authorization Act for Fiscal Year 1994, as amended (10 U.S.C. 7291, note), provides:

SEC. 1031. REVITALIZATION OF UNITED STATES SHIPBUILDING INDUSTRY.

(a) **In general.** The Secretary of Defense shall require that all sealift ships built under the fast sealift program established in section 1424 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1683) shall be constructed and designed to commercial specifications.

(b) Interagency working group to formulate a program to preserve shipyard industrial base.

(1) Not later than March 1, 1993, the President shall establish an interagency working group for the sole purpose of developing and implementing a comprehensive plan to enable and ensure that domestic shipyards can compete effectively in the international shipbuilding market.

(2) The working group shall include representatives from all appropriate agencies, including the Department of Defense, the Department of State, the Department of Commerce, the Department of Transportation, the Department of Labor, the Office of the United States Trade Representative, and the Maritime Administration.

(3) The President shall submit to Congress the comprehensive plan developed by the working group not later than October 1, 1993.

(c) **Report on ship dumping practices.** The Secretary of Transportation shall prepare a report on the countries that provide subsidies for the construction or repair of vessels in foreign shipyards or that engage in ship dumping practices.

(d) **Report on defense contracts.** The Secretary of Defense shall prepare a report on—

(1) the amount of Department of Defense contracts that were awarded to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d) for the most recent year for which data is available; and

(2) the effect on defense programs of a prohibition of awarding contracts to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d).

(e) **Report on adequacy of United States shipbuilding industry.** The Secretary of Defense shall prepare a report on—

(1) the adequacy of United States shipbuilding industry to meet military requirements, including sealift, during the period of 1994 through 1999; and

(2) the causes of any inadequacy identified and actions that could be taken to correct such inadequacies.

(f) **Submission of reports.** The reports under subsections (c), (d), and (e) shall be submitted to Congress with the President's budget for fiscal year 1994.

(g) **Penalty for failure to comply**

(1) Except as provided in paragraph (2), if the President fails to submit to Congress a comprehensive plan as required by subsection (b) by October 1, 1993, no funds appropriated to the Department of Defense for fiscal year 1994 may be used to enter into a contract for the construction, repair, or purchase of any product or service with any company that has headquarters in any country that continues to provide a subsidy to a foreign shipyard for the construction or repair of vessels or that engages in ship dumping practices.

(2) Paragraph (1) shall not apply if the President—

(A) notifies Congress that he is unable to submit the plan by the time required under subsection (c); and

(B) includes with the notice a brief explanation of the reasons for the delay and a statement that the plan will be submitted by April 15, 1994.

(h) **Definitions.** For purposes of subsection (c):

(1) The term “foreign shipyard” includes a ship construction or repair facility located in a foreign country that is directly or indirectly owned, controlled, managed, or financed by a foreign shipyard that receives or benefits from a subsidy.

(2) The term “subsidy” includes any of the following:

(A) Officially supported export credits and development assistance.

(B) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including—

(i) grants;

(ii) loans and loan guarantees other than those available on the commercial market;

(iii) forgiveness of debt;

(iv) equity infusions on terms inconsistent with commercially reasonable investment practices;

(v) preferential provision of goods and services; and

(vi) public sector ownership of commercial shipyards on terms inconsistent with commercially reasonable investment practices.

(C) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including the kinds of support listed in clauses (i) through (v) of subparagraph (B), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

(D) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

(E) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits, deductions, exemptions and preferences, including accelerated depreciation, if the benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

(F) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anti-competitive arrangements.

(G) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers of significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.

(H) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Uruguay Round of trade negotiations.

(3) The term “vessel” means any self-propelled, sea-going vessel—

(A) of not less than 100 gross tons, as measured under the International Convention of Tonnage Measurement of Ships, 1969; and

(B) not exempt from entry under section 441 of the Tariff Act of 1930 (19 U.S.C. 1431).

C. CONVERSION OF DEFENSE CAPABILITY PRESERVATION AUTHORITY TO NAVY SHIPBUILDING CAPABILITY PRESERVATION AUTHORITY.

10 U.S.C. 7315. (1999) PRESERVATION OF NAVY SHIPBUILDING CAPABILITY.¹

(a) **Shipbuilding Capability Preservation Agreements.**—The Secretary of the Navy may enter into an agreement, to be known as a “shipbuilding capability preservation agreement”, with a shipbuilder under which the cost reimbursement rules described in subsection (b) shall be applied to the shipbuilder under a Navy contract for the construction of a ship. Such an agreement may be entered into in any case in which the Secretary determines that the application of such cost reimbursement rules would facilitate the achievement of the policy objectives set forth in section 2501(b) of this title.

¹ 10 U.S.C. 7315, was enacted by Section 1027(a) of Public Law 105–85, approved November 18, 1997 (111 STAT. 1878), the Department of Defense Authorization Act for fiscal year 1998. Section 1027 further provides:

“(b) **Implementation.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of the Navy shall establish application procedures, and procedures for expeditious consideration of shipbuilding capability preservation agreements as authorized by section 7315 of title 10, United States Code, as added by subsection (a).

“(c) **Report.**—Not later than February 15, 1998, the Secretary of the Navy shall submit to Congress a report on applications for shipbuilding capability preservation agreements under section 7315 of title 10, United States Code, as added by subsection (a). The report shall specify the number of the applications received, the number of the applications approved, and a discussion of the reasons for disapproval of any application disapproved.

“(d) **Repeal of Superseded Provision.**—Section 808 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 393; 10 U.S.C. 2501 note) is repealed.”

(b) **Cost Reimbursement Rules.**—The cost reimbursement rules applicable under an agreement entered into under subsection (a) are as follows:

“(1) The Secretary of the Navy shall, in determining the reimbursement due a shipbuilder for its indirect costs of performing a contract for the construction of a ship for the Navy, allow the shipbuilder to allocate indirect costs to its private sector work only to the extent of the shipbuilder’s allocable indirect private sector costs, subject to paragraph (3).

(2) For purposes of paragraph (1), the allocable indirect private sector costs of shipbuilder are those costs of the shipbuilder that are equal to the sum of the following:

(A) The incremental indirect costs attributable to such work.

(B) The amount by which the revenue attributable to such private sector work exceeds the sum of

(i) the direct costs attributable to such private sector work; and

(ii) the incremental indirect costs attributable to such private sector work.

(3) The total amount of allocable indirect private sector costs for a contract covered by the agreement may not exceed the amount of indirect costs that a shipbuilder would have allocated to its private sector work during the period covered by the agreement in accordance with the shipbuilder’s established accounting practices.

(c) **Authority To Modify Cost Reimbursement Rules.**—The cost reimbursement rules set forth in subsection (b) may be modified by the Secretary of the Navy for a particular agreement if the Secretary determines that modifications are appropriate to the particular situation to facilitate achievement of the policy set forth in section 2501(b) of this title.

(d) **Applicability.**—(1) An agreement entered into with a shipbuilder under Subsection (a) shall apply to each of the following Navy contracts with the shipbuilder:

(A) A contract that is in effect on the date on which the agreement is entered into.

(B) A contract that is awarded during the term of the agreement.

(2) In a shipbuilding capability preservation agreement applicable to a shipbuilder, the Secretary may agree to apply the cost reimbursement rules set forth in subsection (b) to allocations of indirect costs to private sector work performed by the shipbuilder only with respect to costs that the shipbuilder incurred on or after November 18, 1997, under a contract between the shipbuilder and a private sector customer of the shipbuilder that became effective on or after January 26, 1996.

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D. CONTRACTS FOR NUCLEAR SHIPS; SALES OF NAVY SHIPYARD ARTICLES AND SERVICES TO PRIVATE SHIPYARDS. Section 1016 of Public Law 106-65 (113 STAT. 744), added a new section to title 10, as follows:

10 U.S.C. 7300. Contracts for nuclear ships; sales of naval shipyard articles and services to private shipyards. The conditions set forth in section 2208(j)(1)(B)¹ of this title and subsection (a)(1) and (c)(1)(A) of section 2553² of this title shall not apply to a sale by a naval shipyard of articles or services to a private shipyard that is made at the request of the private shipyard in order to facilitate the private shipyard's fulfillment of a Department of Defense contract with respect to a nuclear ship. This section does not authorize a naval shipyard to construct a nuclear ship for the private shipyard, to perform a majority of the work called for in a contract with a private entity, or to provide articles or services not requested by the private shipyard.

¹10 U.S.C. 2208. Working-capital funds, provides in part:

* * *

(j) (1) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if—

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract; and

(B) the solicitation for the contract or subcontract is open to competition between Department of Defense activities and private firms.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

²10 U.S.C. 2553. Articles and services of industrial facilities: sale to persons outside the Department of Defense

(a) Authority to sell outside DOD.

(1) The Secretary of Defense may sell in accordance with this section to a person outside the Department of Defense articles and services referred to in paragraph (2) that are not available from any United States commercial source.

(2) (A) Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are articles and services that are manufactured or performed by any working-capital funded industrial facility of the armed forces.

(B) The authority in this section does not apply to sales of articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by regulations required by section 4543 of this title.

(b) Designation of participating industrial facilities. The Secretary may designate facilities referred to in subsection (a) as the facilities from which articles and services manufactured or performed by such facilities may be sold under this section.

(c) Conditions for sales.

(1) A sale of articles or services may be made under this section only if—

(A) the Secretary of Defense determines that the articles or services are not available from a commercial source in the United States;

(B) the purchaser agrees to hold harmless and indemnify the United States, except in any case of willful misconduct or gross negligence, from any claim for damages or injury to any person or property arising out of the articles or services;

(C) the articles or services can be substantially manufactured or performed by the industrial facility concerned with only incidental subcontracting;

(D) it is in the public interest to manufacture the articles or perform the services;

(E) the Secretary determines that the sale of the articles or services will not interfere with the military mission of the industrial facility concerned; and

(F) the sale of the goods and services is made on the basis that it will not interfere with performance of work by the industrial facility concerned for the Department of Defense.

(2) The Secretary of Defense may waive the condition in paragraph (1)(A) and subsection (a)(1) that an article or service must be not available from a United States commercial source in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(d) Methods of sale.

(1) The Secretary shall permit a purchaser of articles or services under this section to use advance incremental funding to pay for the articles or services.

(2) In the sale of articles and services under this section, the Secretary shall—

(A) charge the purchaser, at a minimum, the variable costs, capital improvement costs, and equipment depreciation costs that are associated with the articles or services sold;

(B) enter into a firm, fixed-price contract or, if agreed by the purchaser, a cost reimbursement contract for the sale; and

(C) develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the articles or services sold.

(e) Deposit of proceeds. Proceeds from sales of articles and services under this section shall be credited to the funds, including working capital funds and operation and maintenance funds, incurring the costs of manufacture or performance.

(f) Relationship to Arms Export Control Act. Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(g) Definitions. In this section:

(1) The term “advance incremental funding”, with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the manufacture of the articles or the performance of the services, as the case may be; and

E. OTHER.

Naval vessels not to be maintained by foreign shipyard. Act Oct. 18, 1986, P.L. 99-500 and Act Oct. 30, 1986, P.L. 99-591, Title I, §101(c) in part, 100 Stat. 3341-118 (10 U.S.C. 7291, note), provide: "No naval vessel or any vessel owned and operated by the Department of Defense homeported in the United States may be overhauled, repaired, or maintained in a foreign owned and operated shipyard located outside of the United States, except for voyage repairs."

Depot-level maintenance of ships homeported in Japan. Act Nov. 29, 1989, P.L. 101-189, Div A, Title XVI, Part B, §1614(a), (b), 103 Stat. 1601 (10 U.S.C. 7291, note), provides:

"(a) Requirement that certain work be performed in United States. The Secretary of the Navy shall require that, to the extent feasible and consistent with policies of the Navy regarding family separations, not less than one-half of the depot-level maintenance work described in subsection (b) (measured in cost) shall be carried out in shipyards in the United States (including the territories of the United States).

"(b) Work covered. Depot-level maintenance work referred to in subsection (a) is depot-level maintenance work for naval vessels that is scheduled as of October 1, 1989, to be carried out in Japan during fiscal years 1990, 1991, and 1992."

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(2) The term "not available", with respect to an article or service proposed to be sold under this section, means that the article or service is unavailable from a commercial source in the required quantity and quality or within the time required.

(3) The term "variable costs", with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.